IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

**O R D E R**

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1026/2007.
In
S.B. CIVIL WRIT PETITION NO.2811/2006.

The Dundlod Mandi Kraya Vikraya Sahakari Samiti Ltd. Dundlod Mandi

Vs.

The Judge Labour Court No.2, Jaipur and ors.

Date of Order:- **November 27, 2007.**

**PRESENT**
**HON'BLE THE ACTING CHIEF JUSTICE MR.RAJESH BALIA**
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri Brij Sharma on behalf of
Shri R.B. Mathur for the appellants.
Mr. Harshvardhan Nandvana, Deputy Government Advocate for respondents No.3 to 5.
Shri S.S. Naruka for the respondent No.2-workman.

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**BY THE COURT** (Per: Hon'ble Mr.Mohammad Rafiq, J):

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This appeal has been filed by the Dundlod Mandi Kraya Vikraya Sahakari Samiti Ltd. Dundlod Mandi, Mukundgarh, District Jhunjhunu challenging the judgment of the learned Single Judge dated 12/4/2006 whereby its writ petition was dismissed in

which the appellant had impugned the award of the Judge, Labour Court No.2, Jaipur dated 1/3/2006.

2) Respondent No.2 was engaged in the services of appellant-Society as a Driver on 12/4/1993 in the pay scale commencing from 910 for monthly salary of Rs.1530/- when recommendations of the Vth Pay Commission were accepted by the government and Revised Pay Scale Rules of 1998 were enforced w.e.f. 1/9/1996. The respondent-workman demanded revision of his pay in the scale of Rs.3050-4590. Appellant-Society however removed him from service on 10/6/1999. Amount of Rs.18342/- was sent to him as retrenchment compensation and notice pay on 11/6/1999. But, according to respondent-workman, this was not correctly calculated. He filed writ petition being SBCWP No.543/2003 which was decided vide judgment dated 3/5/2005 with a direction to the State Government to refer the industrial dispute to the labour court with a direction to that court to decide the matter within six months.

3) Learned labour court in its award held that the respondent workman had worked with the appellants-Society for over six years and two months

therefore, on the basis of the salary of Rs.3111/- last drawn by him in May, 1999, the workman was entitled to three months salary notice pay of Rs.9333/- and Rs.10768/- as retrenchment compensation of 15 days of every completed year as per provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, the “Act”). In this manner, the workman was entitled to receive a total sum of Rs.20101/- whereas, the appellants-Society has paid to the workman only a sum of Rs.18342/- only. The learned labour court therefore answered the reference holding that retrenchment of the workman vide order dated 10/6/1999 was not legal and valid and he was entitled to reinstatement in service with continuity and full back wages.

4) We have heard Shri Brij Sharma, learned Advocate appearing on behalf of Shri R.B. Mathur, learned counsel for the appellants-Cooperative Societies, Shri S.S. Naruka, learned counsel appearing for respondent No.2-workman and Shri Harshvardhan Nandvana, learned Deputy Government Advocate for respondents No.3 to 5 and perused the material on record.

5) Learned counsel for the appellants has argued that the learned labour court has failed to appreciate that the provisions of Section 25F of the Act were fully complied with inasmuch as, appointment of the workman having not been made in accordance with the rules he was not entitled to payment of regular salary and, therefore, the calculation made by the labour court for the amount of compensation and notice pay was not correct. It was argued that since the post of Driver itself had been abolished, hence there was no question of retaining the workman in service and, therefore, the retrenchment of the workman was justified. That apart, the vehicle which was being driven by the workman was also sold out by the Society. The learned labour court has passed a non-speaking award and has not considered the argument of the appellants in their true perspective. The cheque for the amount of compensation for the period of 6 years and 3 months calculated @ 15 days for every completed year, was sent to the workman on 10/6/1999 along with the amount of 3 months' notice pay. It was argued that even if there was any short fall in

the amount that was due to be paid as compensation or notice pay, though which was actually paid, the labour court at the most could have directed for payment of difference of amount, if any, but in any manner, the action of the appellants-Society in retrenching the services of the workman, could not be held to be illegal and ultravires to the provisions of the Act.

6) Shri S.S. Naruka, learned counsel appearing for the respondent No.2-workman has opposed the appeal and argued that it was proved before the labour court that the last salary drawn by the workman in the month of May, 1999 was Rs.3111/- and upon workman having completed 6 year and 2 months, apart from payment of Rs.10768/- of 15 days salary for every completed year as compensation, the workman was also entitled for an amount of Rs.9333/- for 3 months salary as notice pay. In this manner, the amount which was required to be paid by the management to the workman was Rs.20101/- instead of Rs.18342/- that was actually paid to the workman. This could not be treated as sufficient compliance of the provisions of Section 25F of the Act.

Impugned-award and direction contained therein are thus valid and justified. It was therefore prayed that the appeal may be dismissed.

7) Having heard learned counsel for the parties and scrutinized the material on record with reference to the findings recorded by the learned labour court, we find that what is found to have been proved in the award by the labour court is that workman had completed in the services of the appellants-Society 6 years and 2 months and few days. It was also proved by the evidence before the labour court that the last salary drawn by the workman in the month of May, 1999 was Rs.3111/- and in this manner, the learned labour court while calculating notice pay, amount of Rs.9333/- was held due as three moths notice pay to be paid to the workman. Salary of Rs.3111/- was taken as salary representing wages of 26 days and on that basis, per day wages that was calculated by the labour court was Rs.119.653/-. On the basis of such per day wages, the compensation for six years @ 15 days of every completed year for total 90 days was calculated to be Rs.10768.77. Total of the aforesaid

two amounts thus came to Rs.20101.77. The amount that was offered to be paid by the appellants-Management to the workman was Rs.18342/- was therefore far less than the amount that was required to be paid to the workman in accordance with the provisions of Section 25F of the Act.

8) We, therefore, do not find any error in the order passed by the labour court holding non-compliance of Section 25F of the Act.

9) The arguments that the vehicle which the workman was being driven was sold and that the post of Driver has been abolished, could ofcourse, be reason for the appellants-Society for deciding to retrench the services of the workman but that by itself cannot be taken as substantive for compliance of Section 25F of the Act.

10) In the circumstances, we hold that the learned Single Judge was perfectly justified in refusing to interfere in the matter though granting opportunity to the appellant management to pass a fresh order of termination in accordance with law.

11) We therefore do not find any merit in this appeal.

The appeal is accordingly dismissed with no order as to costs.

**(MOHAMMAD RAFIQ), J.** **(RAJESH BALIA) Actg.CJ.**

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